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Santa Barbara, CA 93101  
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San Diego, CA  
Santa Barbara, CA  
Walnut Creek, CA  
Washington, DC

## PALADIN LAW GROUP® LLP

*Generating Professional:*  
Bret A. Stone, Santa Barbara Office  
BStone@PaladinLaw.com

June 9, 2014

***Via Registered Mail –  
Return Receipt Requested***

TO ALL RECIPIENTS LISTED BELOW:

Re: Notice of Endangerment Pursuant to Section 7002(b)(2)(A) of the  
Resource Conservation and Recovery Act, 42 U.S.C. § 6972(b)(2)(A)  
Demand for Defense and Indemnity Pursuant to Cal. Civ. Proc. Code § 1021.6

Dear Goss-Jewett Company, Inc.:

This letter constitutes a Notice of Endangerment pursuant to Section 7002(b)(2)(A) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(b)(2)(A) and a demand for defense and indemnity pursuant to California Code of Civil Procedure section 1021.6 and under certain written lease agreements. This notice, issued by the estates of Al Goldberg and Betty Goldberg (collectively, "Goldberg"), is directed to Goss-Jewett & Co., Inc. a/k/a Tri-County Sales, Inc. ("Goss-Jewett"), Arthur P. Arns, Robert F. Schack, Estate of Robert W. Schack, Deceased, Estate of Benjamin F. Fohrman, Deceased, Darold E. Merritt, James W. Ross, Donald J. George, Terrence J. George a/k/a Terry George, Deceased as the operators of a chemical supply company at 220 W. Gutierrez Street, Santa Barbara, California (the "Property"), which has caused or contributed to soil, soil gas, indoor air, and groundwater contamination at the Property and migrated off-site and commingled with contamination from other sources (the "Site").

### **A. The contamination of RCRA solid and hazardous wastes at the Site**

The Site was developed in 1965 as a warehouse and office for a dry cleaning supply company known as Tri-County Sales, Inc. Floyd N. Baker owned and operated Tri-County Sales and, in 1968, sold the business and assets to Donald J. George. In 1974, Donald George sold his shares to his brother, Terry George. In 1980, Goss-Jewett & Co., Inc. bought the assets of Tri-County Sales, Inc. and formally merged the two companies in 1983. Arthur P. Arns, Robert F. Schack, Robert W. Schack, Benjamin F. Fohrman, Darold E. Merritt, and James W. Ross managed, controlled, and operated the business at the Property, including the handling, storage, and transportation of PCE. Goss-Jewett stopped operating at the Property in approximately May 1991. Tenants occupying the Property subsequent to Goss-Jewett did not use hazardous substances.

Tetrachloroethylene ("PCE") was stored and delivered in sealed 55-gallon drums until a 5,000 gallon aboveground storage tank ("AST") was installed in 1969. Pictures of the Property indicate two ASTs of different sizes. According to deposition testimony of Donald George, PPG Industries, Inc. installed the original 5,000 gallon AST in 1969 for ease of delivery its delivery of PCE and the second



AST was installed sometime after he left the company. A former Goss-Jewett employee, Fleming Anderson, testified that the AST was filled manually using a hose and nozzle from a tanker truck. Goss-Jewett's trucks were likewise filled from the AST using a similar hose and nozzle method. Occasionally the nozzle was not properly replaced in its holder or for other reasons leaked small amounts of PCE onto the ground. According to a site inspection in May 1991, after the ASTs were removed it was observed that the cement slab that was under the ASTs had caved in from the weight of the tanks and was badly cracked. A subsequent inspection in August 1991 similarly noted depression and cracking of the concrete slab due to past storage in tanks with excessive weight. These cracks and depressions allowed PCE released from the ASTs to easily penetrate the concrete and enter the environment. Several employees have been interviewed who confirm that there was at least one spill in the mid-1980s during which a measurable amount of PCE was spilled onto the ground. Environmental investigations at the Site since then demonstrate that soil and groundwater are impacted by PCE, TCE, and cis-1,2-DCE. The operators managing and controlling the operations at the Property are in a better position than Goldberg to know how and when PCE was released from the ASTs, the tanker trucks, or from some other location at the Site during its operations. Suffice it to say that they operated the facility at the time when PCE was released into the environment from the former ASTs and operations at the Property.

**B. The RCRA solid and hazardous wastes disposed at the Site created an imminent and substantial endangerment**

Goss-Jewett and the individual operators of the business, are responsible for creating, maintaining, and leaving in place environmental conditions that may pose an imminent and substantial endangerment to public health and the environment in violation of RCRA. As operators, they each contributed to the "solid waste" and "hazardous waste" contamination at the Site by handling, discarding, discharging, spilling, or releasing PCE, suddenly and accidentally, negligently, or otherwise, so that the contaminants entered the environment. Specifically, they stored PCE in the AST and transferred PCE between the AST and tanker trucks by hand using a hose and nozzle transfer system all in an area of the Site that consistently shows the highest levels of contamination. These unauthorized releases continue to migrate in the environment causing property damage and appreciable harm to the soil and groundwater. Moreover, the contaminants may present an imminent and substantial endangerment to health or the environment, including the surface and sub-surface soils, groundwater aquifers, and natural resources.

PCE found in the soil, vapors, and groundwater has been the subject of enforcement action against Goldberg by regulatory agencies. The California Regional Water Quality Control Board – Central Coast Region ("Water Board") issued a Cleanup and Abatement Order against Goldberg in 1993. In addition, an Imminent and Substantial Endangerment Determination and Order was issued against Goldberg by the California Department of Toxic Substances Control ("DTSC") in 2012. Most recently, in a letter dated January 30, 2014, DTSC demanded that Goldberg take immediate action to abate vapor intrusion inside the building at the Property, which has required Goldberg to vacate its tenant, to conduct additional investigation, to take steps to mitigate indoor air contamination inside the building at the Property, and to incur other response costs.

The following link to Envirostor provides detailed information about the contamination [http://www.envirostor.dtsc.ca.gov/public/profile\\_report.asp?global\\_id=60001561](http://www.envirostor.dtsc.ca.gov/public/profile_report.asp?global_id=60001561). This public database provides further information demonstrating that the Site has not been fully characterized and that the



nature and extent of the contamination poses an imminent and substantial endangerment to human health and the environment.

As a result of Goss-Jewett's and the individual operator's conduct, acts, or omissions, Goldberg has incurred and continues to incur significant fees and costs. Therefore, Goldberg demands that each of them perform a comprehensive environmental investigation and cleanup of the contamination at and emanating from the Site sufficient to abate the imminent and substantial endangerment to human health or the environment to residential screening levels and to obtain closure of the Site.

**C. Demand for defense and indemnity under contract**

Consistent with section 1021.6 of the California Code of Civil Procedure and the written lease agreement between Goldberg and Goss-Jewett, Goldberg requests that Goss-Jewett provide a defense and indemnity pursuant to express lease terms that require Goss-Jewett to defend and indemnify Goldberg from conditions on the Property. Accordingly, Goldberg demands that Goss-Jewett comply with its obligations under the lease agreements by indemnifying, defending, and holding Goldberg harmless for the fees and costs associated with the contamination, specifically including environmental response costs, attorneys' fees, and loss of use.

**D. Goldberg's intention to file suit**

Goldberg demands that Goss-Jewett and the individual operators investigate and cleanup all contamination at and emanating from the Site, reimburse Goldberg in the amount of \$300,000 for past fees and costs, pay all agency oversight costs, and pay all future fees and costs incurred by Goldberg related to the contamination at and emanating from the Site. Should settlement of these issues not be achieved following receipt of this notice and demand, Goldberg intends to file suit against Goss-Jewett, the individual operators, and any other responsible parties that might subsequently be discovered. Therefore, all evidence must be preserved, including electronically stored information, that may be relevant to or relate to (1) insurance; (2) corporate records; (3) operations at the Property; (4) leases of the Property; (5) employees and vendors relating to business at the Property; (6) any other information that potentially relates to the cause or contribution to the contamination at the Site. If litigation becomes necessary, Goldberg will seek the full costs for the environmental investigation and remediation, including attorneys' fees, as well as other damages and remedies.

The full name, address and telephone number of the persons giving this notice is:

Estate of Al Golberg and Estate of Betty Goldberg  
c/o Dan Rubin  
41488 Yankee Run Court  
Temecula, CA 92591  
(951) 757-7186



The name, address and telephone number of legal counsel representing the person giving the notice is:

Bret A. Stone, Esq.  
Paladin Law Group<sup>®</sup> LLP  
3 W. Carrillo Street, Suite 212  
Santa Barbara, CA 93101  
(805) 898-9700

Consistent with the goals of RCRA, we are hopeful that this matter can be settled shortly. Please contact me at the above telephone number immediately.

Very truly yours,

By: S  
Bret A. Stone  
PALADIN LAW GROUP<sup>®</sup> LLP

Enclosure:

DTSC Imminent and Substantial Endangerment Order  
DTSC letter dated January 30, 2014

Recipient List w/ enclosures:

Goss-Jewett & Co., Inc. a/k/a Tri-County Sales, Inc.  
c/o Darold E. Merritt  
534 E Walnut Ave  
Glendora, CA 91741

Goss-Jewett & Co., Inc. a/k/a Tri-County Sales, Inc.  
c/o Chubb Group of Insurance Companies  
555 So. Flower Street, 3rd Floor  
Los Angeles, CA 90071

Goss-Jewett & Co., Inc. a/k/a Tri-County Sales, Inc.  
c/o Great American Insurance Company  
P.O. Box 5450  
Cincinnati, OH 45201-5450

Goss-Jewett & Co., Inc. a/k/a Tri-County Sales, Inc.  
c/o Brandywine Group of Insurance & Reinsurance Companies  
510 Walnut Street, WB 11E  
Philadelphia, PA 19106

Goss-Jewett & Co., Inc. a/k/a Tri-County Sales, Inc.  
c/o Travelers Indemnity Company  
One Tower Square, 7FP  
Hartford, CT 06183



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Goss-Jewett & Co., Inc. a/k/a Tri-County Sales, Inc.  
c/o Liberty Mutual Insurance Company  
175 Berkeley Street  
Boston, MA 02117

Darold E. Merritt  
534 E Walnut Ave  
Glendora, CA 91741

James W. Ross  
9870 Munro Lake Dr.  
Levering, MI 49755

Arthur P. Arns  
78 Hopsewee Drive  
Okatie, SC 29909

Arthur P. Arns  
c/o Anna Vallejo  
V.I.T. Products, Inc.  
2063 Wineridge Pl.  
Escondido, CA 92029

Robert F. Schack  
16311 Content Circle  
Huntington Beach, CA 92649-2506

Estate of Robert W. Schack, Deceased  
c/o Robert F. Schack  
16311 Content Circle  
Huntington Beach, CA 92649-2506

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c/o Travelers Indemnity Company  
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Hartford, CT 06183

Donald J. George  
310 Moreton Bay Lane, Unit 1  
Goleta, CA 93117

Estate of Terrence J. George a/k/a Terry George, Deceased  
c/o Carol George  
3750 Gregory Way, #16  
Santa Barbara, CA 93105

Estate of Terrence J. George a/k/a Terry George, Deceased  
c/o Liberty Mutual Insurance Company  
175 Berkeley Street  
Boston, MA 02117

cc w/o enclosures:

Honorable Gina McCarthy  
Acting Administrator  
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Mail Code 3213A  
Washington, DC 20460

Mr. Jared Blumenfeld  
Regional Administrator  
UNITED STATES ENVIRONMENTAL  
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75 Hawthorne Street  
San Francisco, California 94105